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SERIAL NUMBER 68/485,574	FILING DATE 06/07/95	FIRST NAMED APPLICANT HOLMES	ATTORNEY DOCKET NO. D 2657-21-3
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33M1/1016

EXAMINER O, K	
ART UNIT 3308	PAPER NUMBER
DATE MAILED: 10/16/96	

**Please find below a communication from the EXAMINER in charge of this application.**

Commissioner of Patents

<b>Office Action Summary</b>	Application No. <b>08/483,574</b>	Applicant(s) <b>Holmes et al.</b>
	Examiner <b>Ki O</b>	Group Art Unit <b>3308</b>

Responsive to communication(s) filed on Jul 31, 1996

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

#### Disposition of Claims

Claim(s) 1-14 is/are pending in the application.  
 Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1-14 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

#### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been  
 received.  
 received in Application No. (Series Code/Serial Number) \_\_\_\_\_.  
 received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

#### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 3

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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***Election/Restriction***

1. Applicant's election with traverse of Group I (claims 1-14) in Paper No. 6 is acknowledged. The traversal is on the ground(s) that the Applicants believe that the "independent" requirement of 35 U.S.C. § 121 has not been satisfied in this case. This is not found persuasive because the criteria for restriction (MPEP §803) between patentably distinct inventions requires that the inventions must be independent (see MPEP §802.01, §806.04, §808.01) *or* distinct (see MPEP §806.05 - §806.05(i)). The restriction was issued on grounds that the inventions were distinct, and therefore, the requirement is still deemed proper and is therefore made FINAL. Claims 15-33 have been withdrawn from further consideration.

***Specification***

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

***Claim Rejections - 35 USC § 112***

3. Claims 1-14 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regards to Claim 1:

The term "disposable" is not a noun.

In regards to Claim 4:

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It is unclear to what is meant by the term "deflection".

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --  
(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

5. Claims 1-4 and 11-14 are rejected under 35 U.S.C. § 102(e) as being anticipated by Williamson, IV et al. (5,360,542).

The elements and structures are considered to be clearly shown in the drawing and specification.

The processing chamber 22 as shown in Figure 32 of Williamson, IV et al. can be considered the blood processing vessel. Since the Applicant does not claim the "support" as being a specific type of structure, made any specific type material, or even it being directly attached to anything, the interpretation can be broad. Therefore, it can be considered that the hinge 242 which hold the blood processing vessel in place as shown in Figure 28 (col. 15, lines 58-65) can be considered a support. The characteristics of Claims 2-4 are considered inherent in such a hinge. In regards to Claims 11-14, see Figure 28.

***Allowable Subject Matter***

6. Claims 5-6 are patentably distinguished over prior art of record because no one or combination of references teach of a support positioned within a recess which is formed on

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one of the first and second channel sidewalls and containing at least part of the blood-related port slot.

7. Claims 7-10 are patentably distinguished over prior art of record because no one or combination of references teach of a control port for controlling a radial position of at least one interface between red blood cells and an adjacent blood component.

*Conclusion*

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ki O whose telephone number is (703) 308-2681.

*K. Long O*  
kyo  
October 15, 1996

*John G. Weiss*  
JOHN G. WEISS  
SUPERVISORY PATENT EXAMINER  
GROUP 3300